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NAVAL WAR COLLEGE
Newport, R.I.

**Professional Military Ethics and the Laws of
War: More Important Now than Ever Before**

by

Frank Harrison

CAPT USN

A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

October 23, 2006

Abstract

This essay focuses on one of the intangible elements of the art of operational leadership – enhancing one’s sense of military ethics and knowledge of the laws of war in order to arrive at a decision. In war, professional military ethics are inextricably woven into the fabric of the decision-making process and, along with other critical elements like desired end state and the laws of war, make up an essential part of a final decision. The essay describes the link between decision-making, ethics, and knowledge of the laws of war. This link is historically based, proven over time, and continues today. Furthermore, understanding it can be a great enabler in making sound decisions and justifying them to national and international audiences. The services should provide the necessary time and effort to ensure their senior officers are educated accordingly, regardless of the cost in time, admittedly a very scarce resource to the flag or general officer. In today’s conflicts, the types of ethical issues that the operational commander, or any flag officer, will encounter are graduate level in their complexity. They require careful thought and study. When the time comes to make a decision of enormous consequence, there may not be time to look up terms like noncombatant immunity, double effect requirements, and necessity.

Introduction

“The highest art in operational leadership is to make timely and sound decisions.”¹ A well refined knowledge of military ethics and of the laws of war is as vital to the operational leader as any other element of operational art, and it is more important today than it has ever been before. One’s sense of military ethics cannot help but affect many of the major decisions one makes, especially during combat operations; therefore, it is a leadership skill in which the services should better educate their officers and one that officers should hone to the best of their ability. Since these decisions may determine the success or failure of a combat operation and affect the lives of many – the commander’s soldiers as well as noncombatant personnel, making the best, most informed decision is imperative. Additionally, these decisions may affect other issues such as political policy, international opinion, and millions of dollars of equipment and assets.

The focus of this paper is to demonstrate that the development of an operational leader’s “refined” sense of professional military ethics and his knowledge of the laws of war requires greater attention, for it will greatly assist him in the decision-making process. This is especially true with the types of warfare we see today, and it appears that it will continue this way in the foreseeable future. From terrorist and guerilla/counterinsurgency types of warfare to peace operations, today’s conflict is a complex, confusing, and difficult environment in which to make a decision. Though one may argue that military decisions facing commanders today are no more or less entwined with political, legal, and ethical ramifications than before, they are undoubtedly given much greater public and international scrutiny. At virtually every battlefield and hotspot, CNN is on scene, providing public and

international coverage of military decisions - and expecting coherent, justifiable explanations for the decisions from the commander.

This writer believes that the services would better equip senior officers in making the critical decisions of today by providing more in-depth training and education in professional military ethics and in the laws of war. Though the services educate and train their officers well in their primary responsibilities and in related subject matter, little time is spent in the study of professional ethics and the laws of war. This essay will attempt to describe how and why the refinement of one's knowledge of professional military ethics and the laws of war is a worthwhile investment in time and effort.

The essay will review briefly *jus in bello* principles of the laws of war and describe the link between military ethics, the laws of war, and the decision-making process; review several historical examples of decisions involving ethics and the laws of war; address the changing nature of warfare and a strategic communication perspective of this topic; and close with recommendations and a conclusion.

The Laws of War and Jus in Bello

“The United States has ratified most of the principal international conventions regarding the laws of war.”² “Department of Defense Directive 5100.17, dated 5 November 1974, concerning the Law of War Program states that ‘the armed forces of the United States will comply with the law of war in the conduct of military operations and related activities in armed conflict, however such conflicts are characterized.’”³ Additionally, CJCSINST5810.01B, dated 25 MAR 2002 requires that the Joint Operations Planning and Execution System includes appropriate guidance to ensure review of plans and rules of engagement for compliance with the law of war. Furthermore, it states that combatant

commanders are responsible for the overall execution of the DOD Law of War Program with an emphasis on preventing law of war violations and improving evaluation, response, and reporting procedures.

The law of armed conflict was designed to minimize the occurrence of war and to provide some semblance of restraint amongst combatants after the fighting started.

Generally speaking, the law of war theory is divided into two categories: *jus ad bellum* and *jus in bello*. *Jus ad bellum* - law to (for going to) war - describes the legally justifiable reasons for nation states to wage war with each other. In the United States, political leadership decides this. *Jus in bello* - law in war - describes how belligerents may be allowed legally to conduct war against one another. *Jus in bello* “concerns the rules of engagement, choice of weapons and targets, treatment of civilian populations and prisoners of war, and so forth. Here the primary responsibility shifts from the civilian policymakers to the military leadership at all levels.”⁴ From a law of war perspective, this essay will focus on the *jus in bello* principle.

Jus in bello is based primarily on the concepts of proportionality and discrimination. Proportionality requires that the degree of force used in combat must be proportional to the military value of the target and should cause no more destruction than reasonably required to achieve a given objective. This concept, without question, easily becomes one of interpretation. As Michael Walzer states, it becomes “a hard criterion to apply, for there is no ready way to establish an independent or stable view of the values against which the destruction of war is to be measured.”⁵ For example, how much destruction is truly required to achieve the neutralization of the enemy, particularly at the expense of noncombatant lives? Discrimination refers to the differences between combatants and noncombatants. “The

central moral idea of just war is that only the combatants are legitimate objects of deliberate attack.”⁶

Military Ethics and the Decision-Making Process

Throughout history, great philosophers, military theoreticians and officers have acknowledged the vital link between one’s sense of ethics and the decision-making process. Aristotle and Plato described the importance of virtue, character, and their relation to ethics; and, St Augustine and Hugo Grotius were instrumental in the development of a philosophical and legal basis for the laws of war – to name only a few. Karl von Clausewitz wrote of the “moral being to the physical as 3:1,” and “Count Gerhard Scharnhorst, first chief of the Prussian General Staff, made the reading of Kant compulsory at the L’Ecole Militaire, the Prussian War College he founded.”⁷ Admiral James Stockdale, former Vietnam War POW and former president of the Naval War College, believed that “philosophy is the logical discipline from which to draw insights and inspiration into military leadership in general, and combat virtues in particular.”⁸ “Admiral Stockdale [so believed] that moral philosophy ought to be a key and critical part of the education of senior Navy officers”⁹ that he created and taught a course in that subject while president of the Naval War College. Other noted authors and professors of military ethics and philosophy at several of the nations war colleges have written about the importance of military ethics in the decision-making process; and, one professor of international relations and military ethics at the U.S. Air War College, has stated “every major decision made, at its root, is an ethical judgment.”¹⁰ From a theoretical and application perspective, the link between ethics and the decision-making process is strong.

An assumption of this essay is that there is a link between military ethics and the decision-making process, therefore refining one’s knowledge of military ethics will

strengthen that link and increase the likelihood of making good decisions, particularly for the operational commander. Can then, a good, even great decision be made without a refined degree of knowledge in ethics and the laws of war? The answer, of course, is “Yes”; and it has been done many times before. However, if one believes that there is a way to make even better decisions, and that way is reasonably within one’s grasp, then one should consider pursuing such a course.

This essay recognizes that one of the reasons why we spend so little time on military ethics and the laws of war is because we believe we are good enough already in this category. It is not because ethics is unimportant; it is because one believes that one’s understanding of it is not an impediment to making the best possible decision. Additionally, and from a time management perspective, there are only so many categories to which anyone can devote time and attention. The cost of getting closer to perfection is more and more time, so a choice has to be made in exactly what one spends time on. This essay hopes to convince the reader that refining one’s sense of understanding in these areas is worth the time and effort.

Why the sense of urgency? Why should one feel compelled? First, it is due to the nature of the military profession. The military profession is different from all others, for as Samuel Huntington asserts, military officers are “managers of violence.”¹¹ This categorization illuminates the stark reality of the profession of arms and compels one to realize that any decision made by management ought to be one that uses every resource available to it, particularly the ethical one. This sanction to kill is by itself the most justifiable, if not ethical, reason for ensuring that one is as best prepared as possible to make decisions involving human life; for, indeed, “every human culture has recognized that taking human life is a morally grave matter.”¹²

This essay believes that ethics, the laws of war, and their link to the decision-making process are worth investing time in even from a pragmatic and time management perspective. Time management is a critical requirement for the commander. Deciding which task or issue he should focus his personal time and energy on is an important matter. In doing this, the commander must decide where it is in his job that he makes the most worthwhile contribution. Otherwise, that role should be assigned to someone else, for in the interests of time, he must focus on that part of the mission where he makes the greatest contribution.¹³ This essay submits that at the end of the day, his greatest contribution lies in the decisions only he can make. So, in the operational commander's hierarchy of values, a more refined sense of military ethics and knowledge of the laws of war support this requirement because they enhance his decision-making ability. This is where he personally must be at his best – or at least strive to be.

Concerning knowledge of the laws of war, Martin Cook, former professor of military ethics at the Army War College, states that

personal experience of teaching ethics in warfare to senior military officers indicates that it is extremely difficult in the contemporary environment to get them to grant even the importance of [proportionality and noncombatant immunity.] The military's cultural expectation that overwhelming force will be used in all circumstances to ensure the maximal safety of one's own forces seriously threatens due regard to considerations of proportionality, military necessity, and discrimination in practice.¹⁴

James Toner, professor of military ethics at the U. S. Air War College, supports Cook with this observation: "Over the years of teaching military ethics, I have found that many, if not most, senior officers lean toward utilitarianism. What matters is the outcome, the bottom line, and the consequence."¹⁵ Well-known positions like the Powell Doctrine which advocates the

use of overwhelming force, amongst other requirements is well known in this regard, as is, the commander's basic responsibility to minimize the number of casualties he has.

Warfare today only exacerbates this situation, requiring commanders to be even more knowledgeable of the laws of war, especially in the context of proportionality and noncombatant immunity. The use of effects based operations (EBO) and precision guided munitions (PGMs) are good examples. In World War II, Korea, Vietnam, and as late as Desert Storm, the U.S. military used methods like strategic bombing, carpet bombing, and alpha strikes to destroy cities and targets with little to no regard for civilian casualties. EBO and PGMs, though they reduce the number of direct casualties enormously, create possible problems of their own that require the consideration of the commander from an ethical and law of war perspective. For example, targets that never would have been considered before now can be, since the cost in civilian lives while destroying the target is much less than a more destructive method.

EBO and PGMs have given the commander a tremendous military capability, allowing him to comply more easily with the laws of war; yet at the same time, have they made killing easier? Do PGMs and EBO make resorting to strikes easier when an otherwise more peaceful solution would have been sought? Or, is their use made easier because of our concern with risk and casualty avoidance? Greatly diminishing or eliminating a country's or city's electrical power, food or water supply, transportation and communication systems may have positive military effects, but from a noncombatant perspective, there are substantial unintended consequences that in time can cause the loss of life for noncombatants through lack of food, medical care and other basic needs.

“Just war theory recognizes these realities. It has long used the “principle of double effect” to sort through the morality of such events and justifies those which, no matter how terrible, do not result from deliberate attacks on civilians.”¹⁶ “To the extent that foreseeable collateral [damage] affects civilians or civilian objects, the humanitarian law principle of proportionality requires balancing [the collateral damage] against the military advantage that accrues from attacking the target. Further, although it is sometimes questioned whether [unintended] effects must be assessed during proportionality calculations, U.S. doctrine affirmatively requires planners to consider them.”¹⁷

However, despite the double effect doctrine, the effect on noncombatants is the heart of the matter from a military ethic and law of war perspective and often presents the operational commander with his ethical dilemma. Though there is a justified military requirement to destroy a target, the commander is still morally obligated to do as much as he can to preserve the lives of all noncombatants, even if significantly increasing the risk to his own soldiers. The question then is “how much risk?” How many of one’s own soldiers are worth losing to neutralize a target instead of destroying it with say, PGMs, even though this action will come at the certain expense of at least “some” noncombatant lives? Possibly, the target is not worth taking after all?

Ethical and law of war issues like these are the types of issues commanders are facing in Iraq and Afghanistan today, and they will remain the norm in the future. The type of warfare the United States is likely to encounter makes it this way. Few, if any, adversaries will face us in a conventional fashion. The U.S. has demonstrated that it is fruitless for the enemy to symmetrically oppose us on the battlefield. Wisely, our adversaries have altered their tactics. The conflicts in Iraq and Afghanistan are perfect examples. The enemy does

not wear uniforms and employs terror tactics. The concept of noncombatant immunity is meaningless to the terrorist as terror tactics by nature ruthlessly target the civilian population. Today, the battlefield is often in and amongst the civilians, living in villages or urban areas. In essence, the laws of war are non-existent to the terrorist, despite the fact that we are morally obligated to comply with them.

In addition to the war on terror, humanitarian intervention and peace keeping / enforcement operations, have been, and probably will continue to be, the most common reason for U.S. troop engagement. “It isn’t too much of an exaggeration to say that the greatest danger most people face in the world today comes from their own states, and the chief dilemma of international politics is whether people in danger should be rescued by military forces from outside.”¹⁸ Unfortunately, these regional conflicts possess idiosyncrasies and elements specific to themselves. They are culturally, ethnically, politically, religiously different from the United States and each other. Consequently, each conflict requires different ROE, targeting rules, and strategies; all of which create new ethical and moral twists in applications of the laws of war. All of which again provide more incentive for the operational commander to acquire a more refined sense of military ethics and intimacy with the laws of war.

James Toner of the Air War College states that “the great burden of military ethics lies in this: if those who control the power to kill and maim are evil or morally unfit, we unleash a torrent of sinister power.”¹⁹ Of course, our concern is not having evil or morally unfit senior leaders. The reality though is no less sinister if power is unleashed in a manner lacking moral judgment or judgment that for lack of preparation could have been more astute. This is not an unfair expectation when considering the consequences of the decisions

that senior leaders can make; and, history reminds us that we are never far removed from doing today what we might never have thought possible yesterday.

Going only as far back as World War II, there were innumerable occasions of total disregard for noncombatant immunity. The strategic bombing campaign of that war attests to this. Granted, hindsight has an inherent tendency to condemn too easily events of the past; and decisions must be evaluated in the context of the time in which they were made. Yet, it is well documented that many national, strategic military, and operational leaders of that day questioned the moral validity of the strategic bombing campaign, despite the magnitude of that war. The following examples illustrate the importance of understanding well the moral/ethical implications of one's decisions and their implication within a just war framework.

In July, 1944, a month after D-Day, the allied army was still stalled in and around the area of the Normandy beachheads. General Omar Bradley's plan for an allied breakout, Operation COBRA, approved by Generals Bernard L. Montgomery and Dwight Eisenhower, called for carpet bombing an area three and a half miles wide, one and a half deep, along the Periers road outside the town of St. Lo.²⁰ In General Bradley's autobiography, he stated that surprise was essential to the success of the plan despite the deaths of noncombatants.²¹ These noncombatants were *allies*. If allied forces bombed their own civilians, it provides context to the fire bombings of Dresden, Tokyo, and other enemy cities, not to mention Hiroshima and Nagasaki.

Winston Churchill, at home in June 1943, watching film footage of an air raid against an industrial center, suddenly exclaimed: "Are we beasts? Are we taking this too far?"²² Towards the end of the war, Churchill had become especially doubtful of the continuing

rationale and morality of area bombing. As early as 1917, while minister of munitions, he wrote that it was unlikely that “terrorization” of German civilians would cow them into submission; it would only increase their resolve.²³ And after describing German Luftwaffe bombings of cities as terrorism at the beginning of World War II, British Bomber Command did the same shortly after.

There are many more examples that clearly demonstrate the moral and ethical dilemmas that can be faced in war and the importance of one’s own preparation in making them. Undoubtedly, there are many valid reasons for choosing one side or the other. The essay is not taking sides on one side or the other as to the morality of the bombing strategy. It wishes only to stress the complexity and moral difficulty inherent in decisions like these. This essay cites just 2 examples to show only that if the great leaders of that time clearly had moral misgivings and difficulties with decisions such as these, the leaders of today can also.

So what good would a refined sense of professional military ethics and the laws of war been to these leaders and future ones? It is impossible to say with any measurable certainty. This essay believes though, that “above all, strategic leaders who set large-scale military policy, control training and organizational culture, and supervise the preparation of operational plans for national militaries need to think in ways deeply conditioned by just war principles.”²⁴ At the very least, this essay’s contention is that decisions made in the future will be more informed ones because the leader is better prepared and better able to understand with greater certainty why he is making the decision. When the day comes to make that momentous decision, that may be the only source of consolation for the decision maker.

Strategic Communication Perspective

Media and public demand for answers is greater today than ever before. In a time when operational and strategic leaders are required to justify military actions that take the lives of civilians and U.S. soldiers, it has become increasingly important that those decisions be justified in a manner that does not alienate international and national public opinion. How military action is perceived, therefore, is becoming more and more important, for even the most impoverished and desolate areas have access to television and the internet. Decisions then, based on a solid understanding of the laws of war, provide logical and reasonable justification for the commander from a strategic communication perspective.

The same decisions, justified from a military ethics perspective also tend to resonate well with the American public. A good reason for this is simply that opinion polls have shown for many years that the US military is the most highly respected professional group in the United States.²⁵ Americans believe that their military upholds the moral high ground. In this light, it is practical that every senior leader understands deeply and communicates well to subordinates and the public the moral and legal underpinnings of the laws of war.²⁶ Though we complain about the CNN effect, it is not all bad because close scrutiny from our own and international citizenry ensures that just war restraints are respected.²⁷

Though the laws of war were conceived for reasons to restrain and limit warfare, there is an important secular basis to them as well. One of the founding reasons for their inception in Europe in the middle ages was to stop, or at least minimize, warfare for religious reasons. From a strategic communication perspective, this secular aspect of the laws of war may provide a reasonable and non-inflammatory rationale for battlefield decisions in the international public forum.

Everyone, especially terrorists, realize the power of the media and the importance of getting their side of the story into the street of world opinion. They also understand that winning the military battle is meaningless if the victory is detrimental to political objectives. In this way, CNN and the media are as much an element of warfare as any other. Their ability to be on station anywhere in the world as events are happening necessitates the requirement for clear, reasonable justifications for our actions before the questions are asked. Responses by our senior commanders, based in international law and the laws of war provide strong justification that is legal, morally based, and more easily understood from the perspectives of all; and it will also provide consistency.

Recommendations

Professional military education has accomplished much in the way of educating and training operational commanders. Graduate level degrees and other types of courses abound, are highly encouraged, and provide senior officers with the skillsets and education necessary to command at the highest levels. This is necessary and benefits the services and officers. This essay recommends that professional military ethics is foundational for all other skillsets, for it educates and assists one in making the most informed decision possible. In this way, it is the single skillset employed in the use of all of them. In essence, one's sense of military ethics is the common operating system, akin to a computer, through which every other skillset is used in the military profession. It is this ethical prism through which many other issues are viewed and decisions are made – in the same way that a doctor and lawyer make decisions based on their professional ethics. Yet, the services spend so little time educating officers, especially senior officers, in the subject.

Consequently, from a professional military education perspective and for the reasons presented in this essay, a robust, meaningful course of study in military ethics and the laws of war would greatly benefit the operational commander and every flag and general officer. Study and practice of both, like any other subject, requires time and more than several classes worth of PowerPoint slide presentations. Moreover, it should be a core requirement for all officers, for this type of course is the foundation of any serious study in leadership. The limiting factor, of course, is time and the many other important issues competing for the scarce time available to senior officers. Does this type of education and training then merit the time and expense? I believe that it does. As stated in this essay, the need and reasons for astute decision making at the operational commander level justify the costs despite the fact that the consequences are for the most part extremely difficult to quantify. Understandably, for example, how does one determine that a poor decision was a result of an officer's not taking a course in military ethics and the laws of war?

This essay is not recommending a masters degree in philosophy for flag officers; that is not a practical or reasonable solution. Rather, the essay recommends a course of study at least a semester in length, designed for the senior leader to refine one's sense of professional military ethics and understanding of just war theory. This course would be designed to familiarize the senior officer with the kinds of challenges inherent and commensurate with their rank. A course similar to the one presently taught as an elective only (not a mandatory course requirement) at the Naval War College is one option. The course description for the Naval War College military ethics course follows, providing an excellent starting point for any course in the subject:

Ethics has always been a core element of the profession of arms; periodically it becomes a headline matter as well. Senior officers are required to be models of

professional rectitude. They must make command decisions about organizational policies and practices which influence, for better or worse, the attitudes and behaviors of other service members.

The purpose of the course is to assist officers to deepen their understanding of an important component of decision-making in the military profession.²⁸

Despite the scarcity of time, this is still an opportune and appropriate occasion for this training. The general course in ethics or philosophy that one may have taken in college or as a junior officer is not suitable. That was many years ago for the vast majority, and it was understood and interpreted through the eyes and experience level of a much younger officer. This military ethics and law of war course would be tailored to the practical and relevant needs of the officer now - to be applied through the yardstick of the officer's present years. Critical to the thesis of this essay is the assertion that a course like this calibrates one's awareness and sensitivity meters to relevant ethical issues that would challenge any flag or general officer, not only the operational commander.

The importance of the classroom environment in this course cannot be overstated. Sitting in a room with officers who will be making the same decisions as you and conducting open, frank, no-holds barred debates on challenging, relevant, ethical issues greatly enhances the learning environment. At the same time, seeing your peer(s) choose a course of action diametrically opposed to yours, and realizing that their choice is the better one, can be very humbling and thought provoking. Study and education of this sort over a period of time will allow one to train and reflect on scenarios one may possibly encounter, and it is the kind of effort and preparation that can only help you in the decision-making process.

“We are, as Aristotle once tried to tell us, the product of our practices. Without serious, substantial education we will not have the conscience (‘with-knowledge’) necessary to act as we ought.”²⁹

Conclusion

This essay has focused on one of the intangible elements of the art of operational leadership – enhancing one’s sense of military ethics and knowledge of the laws of war in order to arrive at a decision. In war, professional military ethics are inextricably woven into the fabric of the decision-making process and make up an essential part of a final decision along with other critical elements like desired end state and the laws of war. The essay has described the link between decision-making, ethics, and knowledge of the laws of war. This link is historically based, proven over time, and continues today. Furthermore, understanding it can be a great enabler in making sound decisions and justifying them to national and international audiences.

The services should provide the necessary time and effort to ensure their senior officers are educated accordingly, regardless of the cost in time, admittedly a very scarce resource to the flag or general officer. In today’s conflicts, the types of ethical issues that the operational commander, or any flag officer, will encounter are graduate level in their complexity. They require careful thought and study. When the time comes to make a decision of enormous consequence, there may not be time to look up terms like noncombatant immunity, double effect requirements, and necessity; and the JAG will only be able to say whether it is legal or not.

In the end, though, a decision will have to be made, and being prepared to make the best, most informed decision within the framework of one’s professional military ethic will be one of the most important questions you will have to answer for yourself, regardless of the consequences. A refined sense of military ethics and understanding of the laws of war will help lead to this end.

Endnotes

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³ Anthony E. Hartle, *Moral Issues in Military Decision Making*. (Lawrence: Univ. Press of Kansas, 1989), 55.

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¹¹ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, ed. Professor H. C. Bartlett, Jr. (Harvard University Press, Cambridge, MA, 1957), 7-17.

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¹⁷ Michael, N. Schmit, "Targeting and Humanitarian Law: Current Issues In Israel Yearbook on Human Rights 34. 2004. Available from <http://www.michaelschmitt.org/images/TargetingandHumanitarianLawIYBFinal.doc>

¹⁸ Walzer, p xi.

¹⁹ James H. Toner, *True Faith and Allegiance: The Burden of Military Ethics*, (Lexington KY: University Press of Kentucky, 1995), 134.

²⁰ Walzer, p 318.

²¹ Walzer, p 318.

²² Christopher C. Harmon, "Are We Beasts?" Churchill and the Moral Question of World War II "Area Bombing" *Naval War College Review*, Newport Paper #1 (1991), 3.

²³ Ibid., 4.

²⁴ Cook, p 37.

²⁵ Martin L Cook, "Moral Foundations of Military Service" *Parameters*, (spring 2000), 117.

²⁶ Martin L Cook, *The Moral Warrior: Ethics and Service in the U.S. Military*, (State University of New York Press, Albany 2004), 22.

²⁷ Martin L Cook, "Moral Foundations of Military Service" *Parameters*, (spring 2000), 128.

²⁸ Excerpt from course description summary to Naval War College course, FE-594: [Ethics and the Military](#)

²⁹ James H. Toner, *True Faith and Allegiance: The Burden of Military Ethics*, (Lexington KY: University Press of Kentucky, 1995), 21.

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